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APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,522		10/08/2003	Steven Allen Hellmann	18830	2945
23556	7590 11/02/2004			EXAMINER	
		K WORLDWID	DURAND	DURAND, PAUL R	
401 NORTH LAKE STREET NEENAH, WI 54956				ART UNIT	PAPER NUMBER
,				3721	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Application No. Application No. Application No. Application No. Application No. HELLMANN ET AL			\mathcal{A}
## Examiner ## Paul Durand ## Duran		Application No.	Applicant(s)
Paul Durand 3721 - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE of THIS COMMUNICATION. A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. If the period for reply specified above is less bits bits (20) days, a reply white ine statistic profession in the realing date of this communication. If the period for reply specified above is less bits bits that the statistic profession is 1000 (M) Month of the reply specified above is less bits bits bits of the communication of the period for reply specified above is less bits bits bits of the communication of the reply specified above is less than bits (20) days, a reply white in the statistic profession is the realistic period will apply and will elegan's 1000 (M) Month of the period for reply specified above is the submitted profession is part of the period for reply specified above is the submitted profession is reply which the statistic profession is part of the communication. Any reply received by the Office lister than these mouths after the mailing date of this communication, wen if timely filed, may reduce any search of the communication. Any reply received by the Office lister than these mouths after the mailing date of this communication, wen if timely filed, may reduce any search of the communication. This action is FINAL. 2b) This action is formation is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-22 is/are pending in the application. 4) Claim(s) 1-22 is/are allowed. 5) Claim(s) 1-22 is/are allowed. 6) Claim(s) 1-23 -713 and 17-22 is/are rejected. 7) Claim(s) 1-33 -713 and 17-22		10/682,522	HELLMANN ET AL.
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provision of 3 CFR 1.13(e). In no event, however, may a reply be timely filed after 50 (6) MONTHS from the malling date of this communication. 93 CFR 1.13(e). In no event, however, may a reply be timely filed after 50 (6) MONTHS from the malling date of this communication. 94 within the statisticy printing the statisticy printing of the part of the provision of the communication of the communication of the communication of the part of the communication of the part of the communication of the communi	Office Action Summary	Examiner	Art Unit
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Art Unit: 3721

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of species III in the reply filed on 8/17/2004 is acknowledged. The traversal is on the ground(s) that applicant would like to expedite the prosecution of the application. This is not found persuasive because expediency is not a valid traversal since it does not present evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case

The requirement is still deemed proper and is therefore made FINAL.

- Claims 1-3,7-13 and 17-20 will be examined on the merits.
- 3. Claims 4-6 and 14-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/17/2004.

Claim Rejections - 35 USC § 103

- 4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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5. Claims 1-3 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clay (US 6,658,813) in view of Olson et al (US 5,771,658).

In regard to claims 1,2,11 and 12, Clay discloses the invention substantially as claimed including a delivery device 104 which conveys articles 14, a first transport means 50 which transports a second article 12 to a packing location (no number given, but generally in the location of half full box in Fig.2) and an assembly mechanism in the form of packing area 60 and wrap machine 115 which combines and wraps the articles (see Figs. 1-5, C2,L16-29 and C3,L36 – C5,L45). What Clay does not specifically disclose is the use of an accumulation area to stage the second articles prior to packaging. However, Olson teaches that it is old and well known in the art of packaging to provide an accumulation area in the form of a stacked article assembly 35, for the purpose of accumulating the articles 42, arranged into groups 23, prior to placement into a package 25 (see Figs. 4,5 and C4, L1-43). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Clay with the accumulating means as taught by Olson, for the purpose of accumulating the articles prior to placement into a package 25.

In regard to claims 3 and 13, Clay discloses the invention substantially as claimed including a first type of article 14, which is can be comprised of a food container, a first transfer device in the form of conveyor 50, and a package system in the form of packing area 60, which combines the articles (see Figs. 1-5, C2,L16-29 and C3,L36 – C5,L45). What Clay does not disclose is the specific use of a packaging machine to pack the first articles. However, the examiner takes Official Notice that it is

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old and well known in the art of food packaging to provide a machine which packages the food items prior to final packaging for the purpose of reducing damage to product. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Clay with a packaging machine for both articles prior to combining for the purpose of reducing damage to product.

6. Claims 7-10 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clay and Olson et al in view of Jones (US 3,311,216).

In regard to claims 7,8,17 and 20, the modified invention of Clay discloses the invention substantially as claimed as applied to claim 1 above except for an accumulation mechanism, which orients the articles. However, Jones teaches that it is old and well known in the art of packaging to provide an accumulation device in the form of row means 16 and alignment means 22, which accumulates and aligns product "E" from a input source for the purpose of ensuring correct alignment prior to packaging (see Figs. 1,2 and C1,L70 – C2,L10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Clay with the accumulating and alignment means as taught by Jones for the purpose of ensuring correct alignment prior to packaging.

In regard to claims 9,10,18 and 19, the modified invention of Clay discloses the invention substantially as claimed as applied to claim 1 above except for a transfer mechanism comprised of a rotating drum or drop slide. It would have been an obvious matter of design choice to provide a transfer mechanism comprised of a rotating drum

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or drop slide, since applicant has not disclosed that a transfer mechanism comprised of a rotating drum or drop slide solves any stated problem or is for any particular purpose and it appears the invention would do equally well with a conventional conveyor.

Conclusion

- 7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Paulucci, Mattei et al, Fadaie, Braunner et al, Olson, Smith, Kirschner, Ziegler and Lashyro have been cited to shoe devices having similar structure.
- 8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 703-305-4962. The examiner can normally be reached on 0730-1800, Monday Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand October 28, 2004

> EUGENE KIM PRIMARY EXAMINER